



COM/GSH/nd3 3/23/2022

FILED

03/23/22

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

03:24 PM

I2112001

Order Instituting Investigation on the Commission's Own Motion Into the Operations, Policies and Practices of Uber Technologies, Inc. (TCP 38150) and Uber Black Sub-carriers Operating on the Uber Black Platform.

Investigation 21-12-001

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

This scoping memo and ruling sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities (Pub. Util.) Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure (Rules).

1. Procedural Background

A prehearing conference (PHC) was held on February 1, 2021, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. After considering the Order instituting the investigation, reply of Uber Technologies, Inc. and discussion at the PHC, I have determined the issues and initial schedule of the proceeding to be set forth in this scoping memo.

2. Issues

The issue to be determined or otherwise considered is whether Uber and its Uber Black Sub-carriers violated the Commission's General Orders, California Public Utilities Codes, Rule 1.1. and whether the Commission should penalize Uber and its Uber Black Sub-carriers for such violations.

3. Need for Evidentiary Hearing

The issue scoped in this proceeding potentially has contested material facts. Accordingly, we will allow parties to present evidence on these issues.

If parties believe after the service of evidence that there is or are material issues of facts that need to be resolved through an evidentiary hearing, the schedule allows for a deadline by which a party may move to request such a hearing.

Any party that believes that an evidentiary hearing is required should file and serve a motion requesting such a hearing in accordance with the schedule as indicated in this Scoping Ruling and Memo. Any such motion must identify and describe (i) the material issues of disputed fact, (ii) the evidence the party proposes to introduce at the requested hearing, and (iii) the schedule for conducting the hearing. The motion shall also state a justification for hearing and what the moving party would seek to demonstrate through hearing. It shall also contain anything else necessary for the Commission to make an informed decision on the motion. Any right that a party may otherwise have to an evidentiary hearing will be waived if the party does not submit a timely motion requesting an evidentiary hearing. The record shall be composed of all filed and served documents and shall include evidence received at a hearing if a motion for hearing is granted.

4. Schedule

The following schedule is adopted here and may be modified by the Administrative Law Judge (ALJ) as required to promote the efficient and fair resolution of the investigation:

EVENT	DATE
All party meet and confer to discuss potential settlement	April 25, 2022 (parties may agree to a sooner alternate date)
Serve and file joint statement outlining progress towards settlement.	May 6, 2022
Prepared opening testimony served	May 18, 2022
Prepared rebuttal testimony served	June 2, 2022
Deadline to serve and file a motion requesting an evidentiary hearing	June 9, 2022
Status conference	Third week of June 2022, approximately
Evidentiary hearing	To be determined at status conference
Opening briefs	To be determined at status conference
Reply briefs [matter submitted]	To be determined at status conference
Proposed decision	No later than 90 days after submission
Commission decision	No sooner than 30 days after Proposed Decision

The purpose of the status conference to be scheduled in June 2022 is to ascertain whether, pursuant to Rule 13.8(c), the parties stipulate to the receipt of prepared testimony into evidence without direct or cross examination or other need to convene an evidentiary hearing, discuss progress towards a settlement, and determine a schedule for the remainder of the proceeding.

The proceeding will stand submitted upon the filing of reply briefs, unless the ALJ requires further evidence or argument. Based on this schedule, the proceeding will be resolved within 12 months as required by Pub. Util. Code Section 1701.2(i). The June 2022 status conference may bring to light facts relevant to this case that would necessitate a schedule that resolves the proceeding after the 12-month deadline.

5. Alternative Dispute Resolution (ADR) Program and Settlements

The Commission's ADR program offers mediation, early neutral evaluation, and facilitation services, and uses ALJs who have been trained as neutrals. At the parties' request, the assigned ALJ can refer this proceeding to the Commission's ADR Coordinator. Additional ADR information is available on the Commission's website.¹

Any settlement between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Commission's Rules of Practice and Procedure and shall be served in writing. Such settlements shall include a complete explanation of the settlement and a complete explanation of why it is reasonable in light of the whole record, consistent with the law and in the public interest. The proposing parties bear the burden of proof as to whether the settlement should be adopted by the Commission.

The schedule set forth in this Scoping Memo includes a date for settlement talks. No later than the date indicated in the schedule, the parties will submit to the assigned ALJ, and served to all parties and filed on the docket, a status report of their efforts, identifying agreements reached and unresolved issues requiring hearing.

¹ See Decision 07-05-062, Appendix A, § IV.O.

6. Category of Proceeding and *Ex Parte* Restrictions

The Commission determined that this is an adjudicatory proceeding.² Accordingly, *ex parte* communications are prohibited pursuant to Article 8 of the Commission's Rules of Practice and Procedure.

7. Response to Public Comments

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the "Add Public Comment" button on the "Public Comment" tab of the online docket card for the proceeding.

8. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 866-849-8390 or 866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

9. Filing, Service, and Service List

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.³

² Order Instituting Investigation, issued December 10, 2021, at 9.

³ The form to request additions and changes to the Service list may be found at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/additiontoservicelisttranscriptordercompliant.pdf>.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail whenever possible, transmitted no later than 5:00 p.m. on the date scheduled for service to occur. Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

The Commission encourages those who seek information-only status on the service list to consider the Commission's subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.

10. Receiving Electronic Service from the Commission

Parties and other persons on the service list are advised that it is the responsibility of each person or entity on the service list for Commission

proceedings to ensure their ability to receive e-mails from the Commission. Please add “@cpuc.ca.gov” to your e-mail safe sender list and update your e-mail screening practices, settings and filters to ensure receipt of e-mails from the Commission.

11. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Brian Stevens is the assigned ALJ and presiding officer for the proceeding.

IT IS RULED that:

1. The scope of this proceeding is described above and is adopted.
2. The schedule of this proceeding is set forth above and is adopted.
3. Evidentiary hearing is needed, although this determination may be changed if it is ultimately found that an evidentiary hearing is not needed to resolve material issues of fact that are in dispute.
4. The presiding officer is Administrative Law Judge Brian Stevens.

This order is effective today.

Dated March 23, 2022, at San Francisco, California.

/s/ GENEVIEVE SHIROMA

Genevieve Shiroma
Assigned Commissioner